IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2360 OF 2006

Lokmanya Shikshan Prasarak Mandal,Vadavali....Petitioner

Versus

Rajaram Waman Masurkar and Ors. ....Respondents

Mr.S.S.Pakale with Ranjana J. Todankar for petitioner
Mrs.S.M.Kelkar for respondent no.1
Mr.M.H.Solkar, AGP for respndent no.2

CORAM : P.V.KAKADE, J.

DATE : 7TH APRIL, 2006

P.C.:

1. Heard the learned counsel for the petitioner. Advocates for respondents appear and waive service.

2. Rule, rule made returnable forthwith by consent.

3. The petitioner-Instituiton has challenged the order of the Presiding Officer, School Tribunal, Kolhapur whereby the appeal was allowed and Respondent nos.1 to 3 were directed to reinstate the appellant i.e. the present Respondent no.1, to his original post since the date of

termination dated 21.8.1998 and to pay him full backwages from the date of termination till his reinstatement and other incidental benefits such as continuity of service, increments, difference in pay etc. The Respondent nos.1 to 3 were also directed to implement this order within a particular period.

4. The Respondent no.1's services came to be otherwise terminated on the basis of letter of Respondent no.3 dated 19.11.1997 directing the petitioner to relieve the Respondent no.1 from service as his post had been rendered surplus. Accordingly, the Respondent no.1 was relieved from service with effect from 21.8.1998. The Respondent no.3 also wrote to the Headmaster of the Petitioner that the Respondent no.1 and one other teacher should be relieved after they return from their leave. Consequently the termination came with effect from 21.8.1998.

5. The Respondent no.1 preferred an appeal against the impugned order. The learned Member of the Tribunal after hearing both the parties came to the conclusion that otherwise termination dated 21.8.1998 was illegal and therefore, was liable to be set aside and further the

State Government's order declaring Respondent no.1 as surplus was also set aside and as such the impugned order came to be passed. Hence the present petition.

6. The learned counsel for the petitioner vehemently urged that the present Respondent no.1 did not challenge the order of the Respondent no.3 dated 19.11.1997, which was cause of action for the termination, but filed the appeal only on the ground that he was relieved by way of otherwise termination dated 21.8.1998 and therefore the appeal was not maintainable. However, perusal of the record shows that such submission is devoid of any merits, in fact those aspects were brought on record by the respondent no.1 by way of amendment of the appeal memo and therefore, it is clear that the issue in respect of illegality of order passed by the Respondent no.3 dated 19.11.1997 was very much under consideration of the Tribunal which is adjudicated in proper manner and therefore, no interference is required to be made.

7. In the course of the argument, it is revealed that subsequently again the post is rendered vacant for the Respondent no.1 and he is working thereon and as such there is no need to address the issue with regard to the

alleged illegality of the order on the factum of rendering of Respondent no.1 surplus in the service as it has become infructuous.

8. Now the only question remains is regarding payment of salary of the period from 21.8.1998 till the rejoining of the respondent no.1 in service. Without further elaboration, it is quite clear that it is the primary responsibility of the State, as it is the aided school and therefore, the State would be under obligation to pay the said salary of the impugned period as their order dated 9.11.1997 is rendered illegal in law. Rule is discharged. The petition stands dismissed with no order as to costs.

9. It is clarified that the respondent no.1 shall continue to be in service of the petitioner and order by the Tribunal dated 2.1.1.2006 is hereby confirmed. The Petitioner-Management is directed to pay the entire salary dues to the respondent no.1 and thereafter submit their bill for reimbursement to respondent no.3 so far as amount of backwages is concerned. With this direction the petition stands dismissed with no order as to costs.

10. It is clarified that after the receipt of the bill

from the petitioner, the State Government - Respondent no.3 shall consider and comply with the order of this court within four weeks.